

Court of Appeals Div II
909 A Street, Suite 200
Tacoma, WA 98402

Michael Ross-Morales
#743579 BB22
Case #55608-1-11

Dated 10-20-2021

Please accept this letter to accompany the Amended Statement of Additional Grounds.

I have sent this to the Court of Appeals when my attorney Josephine Townsend failed to supply what I felt was effective Assistance of Counsel. It has alot of case law mainly written by Division II and I want it read again by the Appellate Court due to Mrs Townsend's ineffective Assistance of Counsel at Trial.

Please submit this to the Board of Appeals I have previously sent it but I believe it cracks up what my appellate Attorney Kathryn Russell felt put in her Brief and most come from Division II of the Appellate Court.

Hopefully the Board will consider all the Case Law that pertains to my charges Especially the Constitutional violations of Due Process & Non Disclosure

Please and Thank You

Sincerely

Michael Ross-Morales
Michael Ross-Morales

FILED
COURT OF APPEALS
DIVISION II
2021 OCT 25 PM 1:57
STATE OF WASHINGTON
BY DEPUTY

I sent this into the Appeals Board before I found out that I would be appointed an appellate attorney. I drafted this myself I hope sending it in didn't hurt my chance at overturning my sentence. They didn't even know I was the Denver County prosecutor.

Is a chickenshit prosecutor you will see when you get what Josie has prepared for you please will you get this sentence overturned

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

7	STATE OF WASHINGTON	} NO. # 19-1-01433-06
8	RESPONDANT	} PURSUANT TO RAP 2.3(b)(2)
9		} MOTION TO DISMISS
10	VS	} CONSTITUTIONAL VIOLATIONS
11	MICHAEL ROSS-MORALES	} PURSUANT TO STATE V MacDONALD
12	PETITIONER	} ATTORNEY AND PRO-SE

I. Introduction

Michael Ross-Morales and through an attorney Josephine Townsend moves the Board, to hear an appeal.

1. PURSUANT to STATE V MacDONALD
2. DEFENSE REQUEST GOVERNED by RAP 2.3(b)(2)
3. PURSUANT to STATE V Blackwell
4. PURSUANT to FRANKS V DELAWARE'S PRISONERS

II. Factual Background

A VEHICLE VS PEDESTRIAN HIT & RUN OCCURRED AT THE 510 Block of Washougal River Road in Washougal, WA on Sept. 30, 2018. The accident was captured on video, the victim 65 year old Michael Simmalink was crossing the road not in a crosswalk on a green light. When he was struck in the southbound lane by a 2000 Hyundai Accent hatchback.

1 ACCIDENT RECONSTRUCTION PUT THE SPEED OF THE VEHICLE AT APPROXIMATELY
2 26 miles per hour at the time of impact.

3 of note is that Mr. Simmalink had been found lying in the
4 roadway on Fourth Plain Blvd the day prior with a broken
5 leg by a passing motorist. Investigators assigned to this
6 crash indicated that Mr. Simmalink may have intentionally
7 walked into the path of an oncoming vehicle which struck
8 him. The video shows Mr. Simmalink bypassing the crosswalk
9 and walking to a darkened portion of the roadway
10 stepping into the road and pausing, when the headlights
11 of the car approach, he is seen to step quickly into the
12 path of the passing car. The vehicle which struck Mr
13 Simmalink does not stop and turns right onto a street.

14 The vehicle had been borrowed by the accused, to go
15 with a female to attempt to process several residences in
16 Washougal. The couple had some trouble locating the residence
17 they needed to serve. Both occupants left the vehicle and
18 knocked on doors in a shared driveway in an attempt
19 to locate the person they were to serve. The car was left
20 running. The accused claims that while they were out of
21 the vehicle it was taken. He believes that it was taken
22 by the person he was trying to serve. The vehicle which
23 had been stolen was recovered by the Washougal Police
24 Department after midnight on Oct. 1st 2018. It was
25 impounded and examined but inexplicably released
26 without giving defense a chance to find favorable
27 discovery and denied defense a chance to examine the
28 vehicle. Which is non disclosure of material evidence
92 violates Defendant's Constitutional Right to Due Process

1 The Police NEVER asked about the Blood, if they would have,
2 the Defendant could have told them when on Oct. 4" 2018
3 THE CAR WAS RELEASED, NOT PRESERVED, DENYING DEFENSE AN
4 opportunity to RE-EXAMINE the Vehicle. ON JUNE 20, 2019
5 PARKER RECEIVED AN E-MAIL FROM LAURE KELLEY, FORENSIC SCIENTI-
6 IST WITH THE WASHINGTON STATE PATROL CRIME LAB WITH DNA
7 RESULTS FROM their Examination. THERE WERE NUMEROUS PEOPLE'S
8 PRINTS AND ROSS-MORALES AND OTHERS WERE IDENTIFIED
9 AS POSSIBLE CONTRIBUTORS.

10 ROSS-MORALES BLOOD WAS ALL OVER THE INTERIOR OF THE
11 CAR. GEAR SHIFT, FLOOR, SEAT BOLT, RESULTS AND CONCLUSIONS
12 INDICATED ALL WERE POSSIBLE CONTRIBUTORS, ROSS-MORALES WAS
13 THE SOLE CONTRIBUTOR OF DNA'S BLOOD ON FOLDER. DEFENSE MOVED
14 TO HAVE BLOOD AND CAR RE-EXAMINED BY ITS OWN INVESTIGATOR
15 OR EXPERT BECAUSE ROSS-MORALES HAD INSTALLED NEW CV AXLES
16 THE DAY PRIOR AND WHILE WORKING TO CUT HIS KNUCKLE ON
17 HIS RIGHT HAND WHILE LOSSENING THE BALL JOINT IN PREPARATION OF
18 CHANGING DRIVE AXLES AND BECAUSE THE CAR WAS MATERIAL
19 EVIDENCE IT WAS OF MANIFEST IMPORTANCE. DEFENSE WAS
20 DENIED EQUAL OPPORTUNITY TO EXAMINE THE CAR AS IT HAD NOT BEEN
21 HELD BY POLICE EVEN THOUGH IT WAS MATERIAL EVIDENCE IN CASE.

22 III ARGUMENT

23 A MOTION TO DISMISS FOR FAILURE TO PROVIDE ACCESS TO DISCOVERY.
24 "A DEFENDANT WHO HAS MADE A SPECIFIC REQUEST TO RE-EXAMINE
25 MATERIAL EVIDENCE AND NON-DISCLOSURE VIOLATES DEFENDANT'S
26 RIGHT TO DUE PROCESS. AND OF COURSE WHEN YOU EXPECT DUE

1 PROCESS AS IN STATE V MACDONALD 122 WASH APP 804, 95
2 P.3d 1248 (DIV 2 2004) THE GOV'T DOES NOT DETERMINE
3 WHAT EVIDENCE IS MATERIAL TO A DEFENDANT. STATE
4 V WRIGHT 87 Wn 2d 783, 787 (1976) OF COURSE NEITHER
5 THE POLICE NOR THE PROSECUTION ARE TO DECIDE FOR
6 THE DEFENSE WHAT IS FAVORABLE OR MATERIAL EVIDENCE.
7 'I.D. THE DEFENSE REQUEST IS GOVERNED BY RAP 2.2(b)
8 RAP 2.2(b) ROSS-MORALES SEEKS DISCRETIONARY REVIEW
9 UNDER RAP 2.3(b)(1) & RAP 2.2(b)(1)

10 ROSS-MORALES ARGUES THAT THE TRIAL COURT COMMITTED
11 AN OBVIOUS ERROR IN DENYING HIS MOTION TO DISMISS OR TO
12 SUPPRESS BECAUSE HE MADE A SPECIFIC REQUEST FOR THE
13 PRESERVATION OF THE CAR AS EVIDENCE AND THE STATE FAILED
14 TO PRESERVE THE CAR. STATE V BOUD 29 Wn App 584, 589,
15 629 P.3d 930, REVIEW DENIED, 96 Wn 2d 1012 (1980).

16 IN GENERAL, IF THE STATE FAILS TO PRESERVE "MATERIAL,
17 EXCULPATORY EVIDENCE" CRIMINAL CHARGES MUST BE
18 DISMISSED" STATE V GROTH, 163 Wn App 548, 557, 261 P.3d
19 183 (2011) (QUOTING STATE V WITTENBARGER, 124 Wn 2d
20 467, 475, 880 P.2d 517 (1994), REVIEW DENIED, 173 Wn
21 2d 1026 (2012) HOWEVER, THE STATE DOES NOT HAVE A
22 DUTY TO PRESERVE ALL MATERIAL THAT MIGHT BE OF CONCIB-
23 VABLE EVIDENTIARY SIGNIFICANCE IN A PARTICULAR PROSE-
24 CUTION" WITTENBARGER, 124 Wn 2d AT 475. IN ORDER TO
25 CREATE A DUTY TO PRESERVE, THE EVIDENCE MUST BE "MATE-
26 RIAL EXCULPATORY EVIDENCE" WITTENBARGER 124 Wn 2d AT
27 475 MATERIAL EXCULPATORY EVIDENCE IS EVIDENCE

1 THAT "POSSESSES AN EXCULPATORY VALUE THAT WAS
2 APPARENT BEFORE IT WAS DESTROYED AND BE OF SUCH
3 NATURE THAT THE DEFENDANT WOULD BE UNABLE TO
4 OBTAIN COMPARABLE EVIDENCE BY OTHER REASONABLY
5 AVAILABLE MEANS." WITTENBERGER, 124 WN 2d AT 475
6 BUT IF EVIDENCE IS NOT MATERIAL EXCULPATORY EVID-
7 ENCE AND IS JUST POTENTIALLY USEFUL, THERE MUST BE
8 EVIDENCE OF BAD FAITH ON THE PART OF POLICE. GROTH,
9 163 WN APP AT 557 EVIDENCE IS JUST POTENTIALLY USE-
10 FUL IF "NO MORE CAN BE SAID THAN IT COULD HAVE BEEN
11 SUBJECTED TO TESTS, THE RESULTS OF WHICH MIGHT HAVE
12 EXONERATED THE DEFENDANT" GROTH, 163 WN APP AT 557
13 THE PRESENCE OF BAD FAITH TURNS ON THE "POLICE'S KNOW-
14 LEDGE OF THE EXCULPATORY VALUE OF THE EVIDENCE AT
15 THE TIME IT WAS LOST OR DESTROYED" GROTH 163 WN
16 APP AT 558. ADDITIONALLY, UNDER BOYD, WHETHER A
17 SPECIFIC REQUEST TO EXAMINE EVIDENCE WAS MADE
18 BEFORE OR AFTER THE DESTRUCTION OF THE EVIDENCE IS
19 RELEVANT IN DETERMINING WHETHER THE DESTRUCTION
20 OR LOSS OF THE EVIDENCE WAS A DUE PROCESS VIOLATION
21 BOYD, 29 WN APP AT 588-89.

22 ROSS-MORANES ARGUES THAT THE CAR WAS MATERIAL-
23 IAL EXCULPATORY EVIDENCE BECAUSE FURTHER EXAM-
24 INATION OF THE CAR WOULD HAVE (1) OFFERED AN ALTER-
25 NATIVE EXPLANATION AS TO WHY HIS BLOOD WAS ON THE
26 DRIVERS SEAT BELT AND (2) SHOWN THAT WAS NOT THE

1 DRIVER BECAUSE THE SEAT AND MIRRORS WOULD NOT
2 HAVE BEEN IN THE PROPER POSITION FOR THE LENGTH OF
3 HIS LEGS. ANYONE CAN SEE THAT A MAN WITH 31 INCH
4 INSEAM WOULD NOT BE ABLE TO REACH CLUTCH PEDAL OR
5 BRAKE PEDAL WHICH CAN BE MEASURED AS THE
6 SEAT COULD BE MEASURED BY AN EXPERT. SO HE DOES
7 SHOW THAT THE DECEDANT'S BLOOD WAS ON THE WIND-
8 SHIELD MAKING THE CAR MATERIAL EXCULPATORY AND
9 BECAUSE THE CAR WAS NOT DISCLOSED TO DEFENSE AND
10 IT IS THAT NON-DISCLOSURE THAT IS SHOWN IN STATE V
11 MACDONALD 122 WASH APP 804, 95 P. 3d 1248 (DICE 2004)
12 DUE PROCESS REQUIRES THE PROSECUTION TO DISCLOSE
13 MATERIAL EVIDENCE TO THE ACCUSED WHICH IF SUPPRESSED
14 OR DESTROYED WOULD DEPRIVE THE DEFENDANT OF A FAIR
15 TRIAL. EVIDENCE UNDISCLOSED TO AN ACCUSED IS MATERIAL
16 AND THEREFORE NON-DISCLOSURE VIOLATES DUE PROCESS
17 IF THERE IS A REASONABLE PROBABILITY THAT HAD THE
18 EVIDENCE BEEN DISCLOSED TO THE DEFENSE THE RESULT OF
19 THE PROCEEDINGS WOULD HAVE BEEN DIFFERENT. A
20 REASONABLE PROBABILITY IS A PROBABILITY SUFFICIENT TO
21 UNDERMINE CONFIDENCE IN THE OUTCOME OF A HEARING
22 OR TRIAL.

23 HERE THE STATE'S OWN INVESTIGATOR OPENS IN
24 HIS REPORT THAT IT IS LIKELY THAT THIS WAS NOT AN
25 ACCIDENT. THAT THE DECEDANT INTENTIONALLY STEPPED
26 IN FRONT OF THE PASSING CAR AS IT WAS PASSING.

1. THIS IS AN ACT OF SUICIDE AND NOT AN ACCIDENT
2. YOU HAVE NO EVIDENCE TO INDICATE THAT WHOEVER WAS
3. DRIVING LEFT THE SCENE OF AN ACCIDENT, YOU HAVE ONLY
4. EVIDENCE THAT WHOEVER WAS DRIVING, LEFT THE
5. SCENE OF A SUICIDE.

6. Webster's Dictionary: Accident: AN UNFORTUNATE INCIDENT
7. THAT HAPPENS UNEXPECTEDLY AND UNINTENTIONALLY, TYPIC-
8. ALLY RESULTING IN DAMAGE OR INJURY.

9. Webster's Dictionary: Suicide: THE ACT OR INSTANCE
10. OF A PERSON TAKING THEIR OWN LIFE.

11. (12-18-2020) NOBODY COULD HAVE PREVENTED HIM FROM TAKING HIS OWN LIFE

12. MR. ROSS-MORALES IS CHARGED AS FOLLOWS:

13. RCW 46.52.020 (WHICH DOES NOT CAUSE SUICIDE
14. DUTY IN CASE OF PERSONAL INJURY OR DEATH OR DAMAGE
15. TO ATTENDED VEHICLE OR OTHER PROPERTY: PENALTIES:

16. (1) A DRIVER OF ANY VEHICLE INVOLVED IN AN ACCIDENT
17. RESULTING IN THE INJURY TO OR DEATH OF ANY PERSON

18. OR INVOLVING STRIKING THE BODY OF A DECEASED PERSON
19. SHALL IMMEDIATELY STOP SUCH VEHICLE AT THE SCENE OF

20. SUCH ACCIDENT OR AS CLOSE THERETO AS POSSIBLE BUT SHALL
21. THEN FORTHWITH RETURN TO, AND IN EVERY EVENT REM-

22. AIN AT THE SCENE OF SUCH ACCIDENT UNTIL HE OR
23. SHE HAS FULFILLED THE REQUIREMENTS OF SUBSECTION (3)

24. OF THIS SECTION. EVERY SUCH STOP SHALL BE MADE
25. WITHOUT OBSTRUCTING TRAFFIC MORE THAN IS NECESSARY

(12-18-2020) NO ONE COULD HAVE STOPPED HIM FROM COMMITTING
SUICIDE AND YOU WILL SEE IT WAS AN ACT OF SUICIDE

IV CONCLUSION

THE PROSECUTION HAS VIOLATED THE DUE PROCESS RIGHTS OF MR. ROSS-MORALES BY NOT PROVIDING ACCESS TO ACTUAL MATERIAL EVIDENCE WHICH IS NECESSARY FOR PROVIDING PROOF OF HIS INNOCENCE AND BY DESTROYING OR RELEASING THE MATERIAL EVIDENCE WHICH IS NECESSARY FOR PROVING HIS INNOCENCE. ON THAT BASIS ALONE THE MANDATORY RESULT IS DISMISSAL (12-18-2020) THIS WILL BE MADE A PUBLIC RECORD

SECONDARILY, THE STATE INVESTIGATOR OPENS THAT IT LOOKS LIKE THE DECEDENT STOPPED IN FRONT OF THE ONCOMING VEHICLE INTENTIONALLY, WHICH IS CONSISTANT WITH HIM BEING FOUND IN THE ROADWAY WITH A BROKEN LEG THE DAY BEFORE AND THEN STOPPING INTENTIONALLY IN FRONT OF A PASSING VEHICLE. THAT IS AN INTENTIONAL ACT OF SUICIDE AND FOR WHICH THE STATUTE DOES NOT APPLY.

AND IN STATE V BLACKWELL 120 WASH 2d 822 845 P.2d 1017 (1993) FAILURE TO PRESERVE EVIDENCE THAT IS MATERIAL AND FAVORABLE TO AN ACCUSED GENERALLY VIOLATES DEFENDANTS CONSTITUTIONAL RIGHT TO A FAIR TRIAL. DUE PROCESS WAS DENIED THE MINUTE THE POLICE RELEASED THE CAR, WHETHER IT WAS RELEASED IN BAD FAITH OR NOT IT IS THE SAME AS DESTROYING EVIDENCE. SINCE POLICE AND PROSECUTION HAD THE OPPORTUNITY TO GATHER EVIDENCE FROM THE CAR, NOW DISCLOSURE

1 To The Defense violates defendant's Constitutional
2 Right to Due Process, Being as it would have
3 affected the Confidence in the Outcome of the
4 Case in a hearing or Trial.

5 And if were looking for a similar way to stop
6 the Use of Evidence that was Destroyed then we
7 can bring in FRANKS v DELAWARE which put "Fruit
8 of the Poisonous Tree" in the law Books. Also I would
9 like to bring into play RE: BRENNAN 117 WASH App
10 797, 72 P.3d 182 (Div 1 2003) The Purpose of Holding
11 Police and others Assisting Prosecutors Accountable for
12 providing Exculpatory Evidence is that Exculpatory
13 Evidence cannot be kept out of the hands of Defense
14 just because Prosecutor does not have it. Otherwise
15 Prosecutors could instruct those assisting them not
16 to give Prosecutors certain types of info resulting
17 in Police and other Investigating Agencies Acting as
18 Final Arbiters of Justice. In STATE V MERISON 28 WASH App
19 659, 625 P.2d 735 (Div 2 1981) To Establish Due Process on
20 the basis of Loss of Evidence that was material to Guilt or Inno-
21 cense or favorable to the Defendant, Defendant must make an
22 affirmative showing that the missing Evidence would
23 have created reasonable doubt that did not otherwise exist
24 And for all these reasons the Case against Mr. Ross Morales
25 should be dismissed. This was not an Accident it was an
26 intentional Act of Smeider And for which the Statute
27 does not apply And for all these reasons the Case sho

1. BE DISMISSED OR TURN OVER THE CONVICTION AND
2. EXONERATE MR ROSS-MORALES BECAUSE THE CHARGES DO NOT FIT
3 THIS MOTION WAS WRITTEN PRO-SE AND I AM ASKING
4 MY DEFENSE LAWYER TO STILL REPRESENT ME AND ALLOW
5 ME TO ENTER THIS MOTION ALONG WITH MY AGENCIES
6 REQUEST FOR A PREPT

7 X. Michael Ross-Morales # CFN 145839 84-3
8 signed on November 23, 2020
9 ADDEN 12-18-2020

10 I am only seeing why a PROSECUTOR would go
11 to such lengths to TRY to BLOCK EVERY MOTION
12 Josephine submitted I'm his 1ST CASE COMING
BACK AFTER A 1 YEAR sabbatical TO HELP HIS
WIFE BUT FOR HIM TO HIS, CHANGE THE 2ND PRONG
OF WITZINGER HE KNOWS THAT BOTH PRONGS
OF SMITH, STIMMED HAVE THIS 2 PRONGS THAT HIS
CLAIMS WERE NOT MET AND DUE TO THE DECREASED
Blood on Windshield MADE THE CAR EXCEPTIONARY EVIDENCE
AND SINCE THERE'S NO REASONABLY AVAILABLE WAY TO GET
THE EVIDENCE USING A LIKE CAR IT METS BOTH
PRONGS. COLIN HAGES HAS USED & ABUSED HIS LACK OF
KNOWLEDGE TO KEEP THE JUDGE WHO HAS NOT BEEN
ON THE BENCH LONG ENOUGH TO KNOW THE LAW WELL STRONG
AND YOU ARE GOING HELP ME PROVE HE (HAGES)
his position to COLIN WAS LIAISON DETECTIVE KIP TERNOWS
FUCK UP BY NOT KEEPING MATERIAL EVIDENCE TO BE
DISCLOSED TO DEFENSE NON-DISCLOSURE IS A DUE PROCESS VIOLATION

EO